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OFFICE OF PETITIONS

In re Application of
Verma Ritu et al.
Application No. 10/645,576
Filed: August 21, 2003
Attorney's Docket No. J6852(C)

ON PETITION

This is a decision on the petition filed July 9, 2004 under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of August 21, 2003, rather than the presently accorded filing date of August 22, 2003. The petition is being treated under 37 CFR 1.10(d).

Petitioners request the earlier filing date on the basis that the application was deposited in Express Mail service on August 21, 2003, pursuant to the requirements of 37 CFR 1.10.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came

into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in s 10.1@) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed July 9, 2004, is accompanied by a United States Postal Service Express Mail Pickup Service Statement which includes Express Mail label no. ER015864060US, the same Express Mail label number found on the application papers, in addition to a letter from Postmaster Frank Zeevalk, indicating that the US Postal Service error caused the date-in not to be entered on the express mail label identified above. Finally, petitioners have included a copy of information found in the USPS Internet Track & Confirm Database which also corroborates that an item bearing Express Mail Label No. ER015864060US was deposited in US Express Mail prior to August 22, 2003 since it was delivered on August 22, 2003. Thus, the petition is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is **GRANTED**.

In view of the above and given the basis for granting the petition, the petition fee in the amount of \$130 will be credited back to deposit account no. 12-1155.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to August 21, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions